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daries of the land were uncertain. *Held*, mere delay on the part of the State will not bar its right to quiet title thereto. *State v. Ball* (Neb. 1911), 133 N. W. 412.

Following the English doctrine, a few of the States have held that no estoppel in pais can be set up against the State, it being thought inconsistent with its sovereignty and prerogatives; *State v. Williams*, 94 N. C. 891; *State v. L. S. & M. S. Ry. Co.*, 1 Ohio N. P. 292. But it is now settled that when a State waives its sovereign prerogatives, makes contracts, and has dealings with private persons or corporations, it is to be treated as a private person; *Hall v. Wisconsin*, 103 U. S. 5. Hence the State may in a proper case be estopped the State from asserting title. *State v. Lincoln Street Ry. Co.*, 80 Neb. 333, 14 L. R. A. (N. S.) 336; either by its acts, conduct, silence or acquiescence, *State v. Flint & P. M. R. R. Co.*, 89 Mich. 481; *State v. Jackson L. & S. R. Co.*, 69 Fed. 116; *Walker v. U. S.*, 139 Fed. 409. A State cannot be estopped by acts of its officers beyond the scope of their authority, *Saunders v. Hart*, 57 Tex. 8; *Lee v. Munroe*, 7 Cranch 366; *John Shillito Co. v. McClung*, 51 Fed. 868; *State v. Brown*, 67 Ill. 435. But is estopped when they act within the authority conferred. *People v. Stephens*, 71 N. Y. 527; *St. Paul S. & T. F. R. Co. v. 1st Div. St. P. etc.*, 26 Minn. 31; *Chicago v. Sexton*, 115 Ill. 230; *Walker v. U. S.*, 139 Fed. 409. While the general principle is that laches or staleness of a claim cannot be set up as a defense against the United States, *U. S. v. Willamette Val. & Wagon Road Co.*, 54 Fed. 807; *U. S. v. Kirkpatrick*, 9 Wheat 720, 735; or a State, *People v. Brown*, 67 Ill. 435; nevertheless when the government or state sues in equity as party plaintiff relating to *proprietary interests*, it is affected by those equities recognized in controversies between private parties. *U. S. v. Chandler-Dunbar Co.*, 152 Fed. 25, 40. "Estoppel resting on the observance of honest dealing may become of higher importance than the preservation of the public domain." *U. S. v. Willamette Val. & Wagon Road Co.*, *supra*. Length of time, full knowledge, and inaction are important elements and will in a proper case estop the State from asserting title. *State v. Lincoln Street Ry. Co.*, 80 Neb. 333, 14 L. R. A. (N. S.) 336; *Com. v. Bala & B. M. Turnp. Co.*, 153 Pa. 47; *State v. Bailey*, 19 Ind. 453; *City of Peoria v. Cent. Nat. Bank*, 224 Ill. 43; *Simplot v. City of Dubuque*, 49 Iowa 630. These elements were present in the principal case, see dissenting opinion.

FALSE PRETENSES—DEFENSES—ILLEGALITY.—Defendant was indicted for obtaining money under false pretenses. He had represented to complaining witness that he had counterfeit money for sale, and obtained from the latter \$65 in lawful money on a promise to deliver \$300 in counterfeit bills. Defense was the illegality of the transaction on the theory that such taint gave the prosecutor no standing in court. *Held*, though illegality of the transaction was established, it is no defense to an action under the statute defining the crime of obtaining money under false pretenses. Indictment quashed on other grounds. *Horton v. State* (Ohio 1911), 96 N. E. 797.

The issue is thus stated by the court, "Can there be a conviction for obtaining money under false pretenses, when the transaction on the part of the

person from whom the money is obtained would have been unlawful if the representations of the defendant had been true?" In answering the question in the affirmative the Ohio court adopts the view of a majority of the states where it has been passed upon. *People v. Martin*, 102 Cal. 558; *In re Cummins*, 16 Colo. 451; *Gilmore v. People*, 87 Ill. App. 128; *Casily v. State*, 32 Ind. 62; *Commonwealth v. O'Brien*, 172 Mass. 248; *Peope v. Watson*, 75 Mich. 582; *Cunningham v. State*, 61 N. J. L. 67; *Commonwealth v. Henry*, 22 Pa. St. 253; *Lovell v. State*, 48 Tex. Crim. 85. The reason of the rule is that the action is criminal in its nature and not one between parties. While in the latter cases the court will leave both litigants where it finds them, in the former public justice alone is concerned and "so far as the public is interested one party cannot excuse or defend his criminal conduct because the other is equally guilty with him." *Cunningham v. State*, *supra*. This view was taken by the English courts in *Regina v. Hudson*, 8 Cox C. C. 305; and prevails in Canada, *Regina v. Ewing*, 21 U. C. Q. B. 523, 533. New York and Wisconsin, however, have adhered to a contrary doctrine. In 1871 *McCord v. People*, 46 N. Y. 470, became authority for the proposition that a plea of "unlawful transaction" was a good defense to an indictment for obtaining money under false pretenses. The court says, "Neither the law nor public policy designs the protection of rogues in their dealings with each other, or to enforce fair dealing and truthfulness as between each other in their dishonest practices. The design of the law is to protect those who for some honest purpose are induced, upon false and fraudulent representations, to give credit or part with their property to another, and not to protect those who for unworthy or illegal purposes part with their goods. The *McCord* case has been followed ever since in New York, though it would seem, as pointed out in *Cunningham v. State*, *supra*, that the New York court had failed to observe the distinction which exists between suits *inter partes* and indictments for a breach of the criminal law. In *People v. Tompkins* (1905), 186 N. Y. 413, 12 L. R. A. (N. S.) 1081, the *McCord* case is followed, but unwillingly, and a strong recommendation is made that a change be effected through legislative enactment. Wisconsin follows New York in *State v. Crowley*, 41 Wis. 271. It is doubtful if a doctrine founded upon so apparent a fallacy will gain recognition in other jurisdictions. However, a dissenting opinion in the principal case contends for application of the New York rule.

HUSBAND AND WIFE—SUPPORT OF SELF AND INFANT CHILDREN—ACTION BY WIFE AGAINST HUSBAND.—Plaintiff, abandoned by her husband, was compelled to expend moneys out of her separate estate to provide necessities for herself and her three infant children. Her separate estate consisted, in part, of the proceeds of manual labor and, in part, of a small sum left her by a deceased relative. She sues her husband to recover the moneys so expended. *Held*, that she is entitled to recover. *DeBrauwere v. DeBrauwere* (N. Y. 1911), 96 N. E. 722.

When this case was tried at the Special Term (*DeBrauwere v. DeBrauwere*, 69 Misc. Rep. 472, 126 N. Y. Supp. 221) the decision was the same as that of the higher court in the principal case but there it was reached on the